

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:

NUKOTE INTERNATIONAL, INC.

NU-KOTE IMPERIAL, LTD.

**INTERNATIONAL COMMUNICATION
MATERIALS, INC.**

ENVIROSMART, INC.

BLACK CREEK HOLDINGS, LTD.,

DEBTORS.

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**JOINTLY ADMINISTERED
UNDER CASE NO. 09-06240**

CHAPTER 11

Judge Keith M. Lundin

Hearing: December 15, 2009 at 10:00a.m.

**MODIFICATION TO FIRST AMENDED JOINT PLAN
OF REORGANIZATION FOR NUKOTE**

Nukote International, Inc. and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively the “Debtors” or “Nukote”), file this Modification to First Amended Joint Plan of Reorganization for the Debtors pursuant to Section 1127(a) of the Bankruptcy Code.

1. The First Amended Joint Plan of Reorganization for Nukote (the “Plan”), filed on November 12, 2009 is hereby modified as follows:

A. The following language with regard to the treatment of the Allowed Priority Tax Claim of the Texas Comptroller of Public Accounts (the “Texas Comptroller”) will be added at the end of Article V, section 5.5:

If Nukote has not already filed any requisite 2008 and 2009 Texas franchise tax returns, those returns will be filed no later than February 1, 2010. The Texas Comptroller will have 45 days from the date the returns are filed to amend its claim. The Debtor reserves the right to object to any amended claim. The Texas Comptroller’s Allowed Priority Tax Claim, if any, shall be paid by the

Reorganized Debtor in quarterly installments commencing May 1, 2010, in an amount sufficient to amortize the Comptroller's claim over a five-year period from the Petition Date. Interest shall accrue on the amount of such Allowed Priority Tax Claim from the Effective Date until such Claim is paid in full. Pursuant to Bankruptcy Code Sec. 511, interest shall accrue at the rate under applicable non-bankruptcy law (Texas Tax Code Sec. 111.060) on the Confirmation Date. If the Reorganized Debtor fails to make a payment when due to the Texas Comptroller pursuant to the terms of this Plan and fails to cure such payment default within ten (10) days after service of written notice on the Reorganized Debtor and its counsel, then the Texas Comptroller may (a) enforce the entire amount of its claim, (b) exercise any and all rights and remedies under applicable nonbankruptcy law, and (c) seek such relief as may be appropriate in the Bankruptcy Court of any other court of competent jurisdiction.

B. The following language with regard to the treatment of the Allowed Priority Tax Claim of the State of New York Department of Taxation and Finance will be added at the end of

Article V, section 5.5:

Any Allowed Priority Tax Claim of the State of New York Department of Taxation and Finance (the "Department") shall be paid in full in equal annual installments beginning on the day that is six (6) calendar months from the Effective Date of this Plan and continuing each year thereafter over a period ending not later than five (5) years after the Petition Date. Paid in full shall include interest from the Effective Date at a rate of interest equal to the rate of interest paid on amounts due under a federal judgment entered on the Effective Date.

The Reorganized Debtor may in its sole discretion choose to: (i) make payments to the Department more frequently than provided for herein; (ii) make payments in an amount greater than the pro rata annual amount due to the Department hereunder; or, (iii) pay the Department's Allowed Priority Tax Claim in full, including with the interest provided for herein, prior to five years from the Petition Date. In the event the Reorganized Debtor exercises its discretion to make a payment in an amount greater than the pro rata annual amount due to the Department, the pro rata amount of all subsequent payments shall be adjusted accordingly. Any exercise by the Reorganized Debtor of its discretion to accelerate one or more payments or to pay a greater pro rata amount shall not bind the Reorganized Debtor to acceleration of other payments or to subsequently pay any amount greater than the pro rata payment due to the Department.

C. The treatment of Allowed Priority Wage Claims set forth in **Article V, section 5.6** of the Plan is modified as follows (modified text appears in bold and italics):

5.6 Class 6: Priority Wage Claims: Allowed Priority Wage Claims shall be paid in full by the Trust *on the later of (a) the Effective Date or (b) if such Claim is a Contested Claim, the date on which the order allowing such Claim becomes a Final Order.*

D. Section 8.4 of the Plan, **Funding of the Trust** is modified to read as follows
(added text appears in bold and italics):

8.4 Funding of the Trust. The Reorganized Debtors will fund an initial sum of \$50,000 from the cash infusion from Richmont to the Trust for the evaluation and pursuit of the Avoidance Actions. *The Reorganized Debtors shall make additional advances into the Trust as, when and in the amounts necessary to fund the payment of Allowed Priority Wage Claims in accordance with §5.6 of the Plan, to the extent the Trust has insufficient cash to fund such payments.* The Reorganized Debtors may advance additional sums to the Trust, but such additional advances shall only be in such amounts as the Reorganized Debtors, in their sole and absolute discretion, shall deem appropriate and reasonable. Any of such additional advances (including amounts advanced to pay Allowed Priority Wage Claims), if any, shall be reimbursed to the Reorganized Debtors, respectively, from the first recoveries on the Avoidance Actions prior to any distributions of the Net Recoveries.

E. The language at section 16.14 of the Plan, **Setoff**, is modified to read as follows
(added text appears in bold and italics):

16.14 Setoff. Except as specifically provided in the Plan, no Creditor shall retain any contractual or statutory right to set off any asset in which the Debtors or Reorganized Debtor has an interest in satisfaction of that Creditor's pre-petition Claim. Any right to set off a claim against an asset of Debtors or Reorganized Debtor which is not specifically retained is waived. *Notwithstanding the foregoing, the Plan shall not affect any rights of Innotex Precision Limited, Print-Rite Procurement Services Limited, Office Depot, Inc., the State of New York Department of Taxation and Finance, and the Texas Comptroller to setoff in accordance with §553 of the Bankruptcy Code and applicable law.*

F. The following language with regard to the proofs of claim filed by Print-Rite Procurement Services Limited and Innotex Precision Limited will be added at the end of **Article XII, section 12.1** so that section 12.1 shall read (added text appears in bold and italics):

12.1 No Distributions Pending Allowance or Estimation of Claims. No payments or distributions shall be made with respect to all or any portion of a Contested Claim unless and until such Claim becomes an Allowed Claim, or Allowed Interest, as determined by Final Order. *Notwithstanding anything to the contrary in this Plan, the Claims of Innotex Precision Limited and Print-Rite Procurement Services Limited are Allowed at*

the amount stated on their filed proofs of claim unless there is an objection to the allowance thereof that has been filed on or before any claims objection deadline. If there is an objection to the allowance filed before a claims objection deadline, then these Claims are Allowed in an amount set forth on a Final Order.

DATED: December 14, 2009

Respectfully submitted,

WRIGHT GINSBERG BRUSILOW P.C.

By: /s/ Frank J. Wright

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the Modification to First Amended Joint Plan of Reorganization for Nukote was served by electronic means via the Court's ECF System or by first class United States mail, postage prepaid on December 14, 2009 to the parties identified on the service list.

/s/ C. Ashley Ellis
C. Ashley Ellis

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*All Other Parties Requesting Notice Receive
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with the Court's Procedures*